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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/904,666	07/12/2001	Edward Anthony Bezek	CFLAY.00046	6182

22858 7590 03/03/2003

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EXAMINER

NORDMEYER, PATRICIA L

ART UNIT	PAPER NUMBER
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1772

DATE MAILED: 03/03/2003

12

Please find below and/or attached an Office communication concerning this application or proceeding.

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Office Action Summary

Application No.

09/904,666

Applicant(s)

BEZEK ET AL.

Examiner

Patricia L. Nordmeyer

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 21 January 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-3 and 5-10 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-3 and 5-10 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on January 21, 2003 has been entered.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1 – 3 and 5 – 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Slat (USPN 6,214,281) in view of Jones et al. (USPN 6,063,414).

Slat discloses a container for food products (Column 1, lines 18 – 19) formed with a liner made from a material chosen from ethyl vinyl alcohol, PET or PEN (Column 4, lines 32 – 35), which is in contact with the product (Figure 1, #10 and Figure 3, #30). The liner has a thickness between 0.01 and 0.30 mils (Column 4, lines 25 – 26). Ridges are formed at the opening of the

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container in order to attach a lid to seal the container (Figures 9 and 10). However, Slat fails to disclose the dry food product acting as a desiccant to draw moisture away from the ethylene vinyl alcohol layer and the dry food product comprising a water activity of less than 0.6 or 0.4 upon the sealing step.

Jones et al. teaches dry pet food with a water activity 0.7 or less (Column 11, lines 16 – 17) that acts as a desiccant since water binds to the soluble fiber material (Column 5, lines 3 – 6) in a polymer (Column 11, lines 7 – 9) container of gas impermeable materials (Column 5, lines 1 – 2) for the purpose of packaging food that does not require preservatives or removal of oxygen to attain an increased shelf life, freshness and palatability of the dry food product.

It would have been obvious to one of ordinary skill in the art at the time the applicant's invention was made to have provided a dry food product with a water activity 0.7 or less to act as a desiccant in a container in Slat in order to package food that does not require preservatives or removal of oxygen to attain an increased shelf life, freshness and palatability of the dry food product as taught by Jones et al.

Response to Arguments

4. Applicant's arguments with respect to claims 1 – 3 and 5 – 10 have been considered but are moot in view of the new ground(s) of rejection. However, since Jones et al. was applied in the above rejection, the arguments will be addressed below.

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In response to Applicant's argument that the prior art fails to recognize a problem with ethyl vinyl alcohol films when exposed to water, Jones et al. suggests the use of a dry food product that reduces the amount of water in a package, (Column 5, lines 3 – 13). Jones et al. teaches a pet food as a desiccant, where the definition of a desiccant is a drying agent. A drying agent absorbs a variety of liquids, including water. By placing the pet food as the material in the container of Slat, moisture would be drawn away from the ethylene vinyl alcohol film on the interior of the container. Since both containers of Jones and Slat are made to hold a food product, when the food of Jones et al. was placed in the container of Slat the food would absorb moisture as it does in Jones et al.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Patricia L. Nordmeyer whose telephone number is (703) 306-5480. The examiner can normally be reached on Mon.-Thurs. from 7:00-4:30 & alternate Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Harold Y. Pyon can be reached on (703) 308-4251. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9310 for regular communications and (703) 872-9311 for After Final communications.


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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0661.

Patricia L. Nordmeyer
Examiner
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pln

February 13, 2003


HAROLD PYON
SUPERVISORY PATENT EXAMINER
1772

2/20/03